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HALLIBURTON'S QUESTIONED AND UNSUPPORTED COSTS IN IRAQ EXCEED \$1.4 BILLION

**JOINT REPORT
PREPARED FOR:**

REP. HENRY A. WAXMAN AND SEN. BYRON L. DORGAN

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EXECUTIVE SUMMARY

Reports of Halliburton's excessive billings have multiplied since the invasion of Iraq. Former Halliburton employees have described how the company charged \$45 for cases of soda and \$100 to clean 15-pound bags of laundry. U.S. government auditors have also issued dozens of reports finding questionable billings, including unreasonable fuel prices and charges for meals that were never served to the troops.

This report, which has been prepared jointly by the minority staff of the House Government Reform Committee and the staff of the Senate Democratic Policy Committee, is the first comprehensive assessment of the magnitude of Halliburton's unreasonable billings in Iraq. The report also examines whether officials at the Defense Department gave Halliburton preferential treatment.

The report finds that government auditors at the Defense Contract Audit Agency have identified more than \$1 billion in "questioned" Halliburton costs. DCAA challenged most of these costs as "unreasonable in amount" after completing audit action because they "exceed that which would be incurred by a prudent person." The auditors found (1) \$813 million in questioned costs under Halliburton's Logistics Civil Augmentation Program (LOGCAP) contract to provide support services to the troops and (2) \$219 million in questioned costs under the company's Restore Iraqi Oil (RIO) contract to rebuild Iraq's oil infrastructure. The magnitude of these questioned costs significantly exceeds previously known estimates.

The DCAA auditors have also found that an additional \$442 million in Halliburton's charges are "unsupported." As a result, Halliburton's total "questioned" and "unsupported" costs exceed \$1.4 billion. See Table A, below.

A previously undisclosed audit by the Army Audit Agency provides additional detail about the nature of Halliburton's questioned costs. Because Halliburton is reimbursed for all of its costs and then receives an additional fee as a percentage of those costs, it has a financial incentive to increase the amount it bills to the U.S. government. Army auditors found that Halliburton "inflated" its cost estimates, charged "excessive costs," billed for equipment that "wasn't necessary," and submitted millions of dollars in "duplicate costs" under the LOGCAP contract.

In several instances, the Army auditors found that Halliburton's cost estimates were many times higher than independent government estimates. Yet military officials "were willing to rely on the contractor's cost estimates with little or no

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question.” Consequently, these inflated cost estimates became Halliburton’s “spending targets” rather than accurate reflections of required services.

TABLE A: DCAA AUDITS OF HALLIBURTON'S IRAQ CONTRACTS			
	“QUESTIONED” COSTS	“UNSUPPORTED” COSTS	COMBINED
LOGCAP CONTRACT	\$813 million	\$382 million	\$1.195 billion
RIO CONTRACT	\$219 million	\$60 million	\$279 million
TOTALS	\$1.032 billion	\$442 million	\$1.474 billion

The auditors also found scores of specific instances of excessive Halliburton charges, including overpriced and double-billed soft drinks, excessive movie rental charges, excessive tailoring services, and excessive charges for tractors, trailers, and other heavy equipment. The auditors reported that they “found more excessive contractor cost estimates” when they compared costs in some task orders “for the identical items on different task orders.” For example, in one task order, Halliburton charged \$2.31 for towels and \$300 for video players. But in other task orders, Halliburton charged \$5 for towels and \$1,000 for video players.

The \$1.4 billion in questioned and unsupported charges by Halliburton have not triggered effective action by the responsible Administration officials to protect the taxpayers’ interests. To the contrary, there have been repeated instances in which Halliburton has received preferential treatment from Defense Department officials. Among other examples, Department officials overruled the objections of career officials in awarding contracts to Halliburton; waived the requirements of federal procurement regulations for Halliburton without justification; disregarded auditor warnings in negotiating additional contracts with Halliburton; and provided the company with millions of dollars in unjustified fees. At one point last year, auditors suggested in a written memorandum that the Department’s failure to take action was encouraging Halliburton’s continued disregard of U.S taxpayer interests.

I. BACKGROUND

Halliburton is the largest contractor operating in Iraq. The Department of Defense has 149 prime contracts with 77 contractors in Iraq worth approximately \$42.1 billion and funded at \$25.4 billion to date. According to Defense Department auditors, Halliburton “alone represents 52% of the total contract value.”¹

Halliburton currently has three multi-billion dollar contracts for work in Iraq. The largest is its multi-year contract with the U.S. Army to provide logistical support to the troops. Known as the Logistics Civil Augmentation Program, or LOGCAP, this contract was awarded to a Halliburton subsidiary, KBR, in December 2001 after a competitive bidding process.² As of September 2004, LOGCAP task orders have been issued worth approximately \$8.6 billion.³

Halliburton's next largest contract in Iraq is the Restore Iraqi Oil (RIO) contract, under which it imported fuel into Iraq and was supposed to rebuild Iraqi oil infrastructure facilities. KBR was awarded this sole-source contract in secret in March 2003 after all other companies were excluded from bidding.⁴ Under this contract, the Army issued ten task orders worth approximately \$2.5 billion.⁵

Halliburton also received another oil reconstruction contract in Iraq called RIO 2. After conducting a competition to replace the no-bid RIO contract, the Defense Department issued two contracts in January 2004 to rebuild Iraqi oil infrastructure in northern and southern Iraq. KBR was awarded the southern RIO 2 contract, which is worth up to \$1.2 billion.⁶

All three of Halliburton's major contracts in Iraq are “Cost Plus Award Fee,” or “cost-plus,” meaning that Halliburton is reimbursed for costs it incurs under the contracts and then receives its profit, or fee, as a percentage of those costs. Under

¹ Defense Contract Audit Agency, *Briefing Slides: DCAA Contract Audit Support for Iraq Reconstruction* (May 3, 2005).

² U.S. Army Field Support Command, *Media Spreadsheet for AFSC LOGCAP* (Dec. 2, 2004). See also Logistics Civil Augmentation Program III (Contract No. DAAA09-02-D-0007) (Dec. 14, 2001) (online at www.afsc.army.mil/gc/files/contract%20san.pdf).

³ DCAA Briefing Slides, *supra* note 1.

⁴ U.S. Army Corps of Engineers, *Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom* (Jan. 20, 2004) (online at www.hq.usace.army.mil/CEPA/Iraq/faq.htm#LOGCAP%20Contract).

⁵ DCAA Briefing Slides, *supra* note 1.

⁶ U.S. Army Corps of Engineers, *Press Release: U.S. Army Corps of Engineers Awards Contracts for Repair of Iraq's Oil Infrastructure* (Jan. 16, 2004).

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the LOGCAP contract, Halliburton can receive a fee of up to 3% of its costs, including a guaranteed 1% base fee and an additional 2% fee based on performance.⁷ Under the RIO contract, Halliburton can receive a fee of up to 7% of its costs, including a 2% base fee and a 5% fee based on performance.⁸ Halliburton's fee under the RIO 2 contract has not been made public, but Halliburton officials have stated that it is less than the fee received under RIO.⁹

Since the U.S. invasion of Iraq, reports of wasteful spending and excessive charges under these contracts have multiplied. Former Halliburton employees have provided information to Congress that the company charged \$45 for cases of soda, billed \$100 to clean 15-pound bags of laundry, and insisted on housing its executives at the five-star Kempinski hotel in Kuwait.¹⁰ Halliburton truck drivers have testified that the company "torched" brand new \$85,000 trucks rather than perform relatively minor repairs and regular maintenance.¹¹ Halliburton procurement officials described the company's motto in Iraq as "Don't worry about price. It's cost-plus."¹²

Oil industry experts have criticized the inflated prices charged by the company to import fuel from Kuwait into Iraq, stating that Halliburton's prices were "outrageously high," potentially "a huge ripoff," and "highway robbery."¹³

⁷ Logistics Civil Augmentation Program III (Contract No. DAAA09-02-D-0007, Attachment 002) (Dec. 14, 2001).

⁸ U.S. Army Corps of Engineers, *Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom* (Jan. 20, 2004) (online at www.hq.usace.army.mil/CEPA/Iraq/faq.htm#LOGCAP%20Contract).

⁹ *See Event Brief of Halliburton Company Conference Call*, FDChMedia, Inc. (Mar. 12, 2004) (response of Chris Gaut, Executive Vice President and Chief Financial Officer, Halliburton Co.: "On the LOGCAP contract, we have 1% base fee that we accrue as the work is performed. On the RIO contract, we have 2% base fee that is being accrued as the work is performed. Now under each contract also, we have this award fee or performance bonus that we spoke of earlier. In the case of LOGCAP, that is a potential of 2% and in the case of the Restore Iraqi Oil or RIO contract, it's 5%, on the RIO 1 contract that we are currently working on. The fees on the RIO 2 contract or [are] less").

¹⁰ Statement of Marie deYoung to House Government Reform Committee (June 6, 2004) (online at www.democrats.reform.house.gov/Documents/20040623112930-21444.pdf).

¹¹ Statement of David Wilson to House Government Reform Committee (June 15, 2004) (online at www.democrats.reform.house.gov/Documents/20040623112742-66875.pdf);

Statement of James Warren to House Government Reform Committee (June 13, 2004) (online at www.democrats.reform.house.gov/Documents/20040623112824-51669.pdf).

¹² Statement of Henry Bunting to House Government Reform Committee (June 6, 2004) (online at www.democrats.reform.house.gov/Documents/20040623113130-09594.pdf).

¹³ Letter to Joshua Bolton, Director of the Office of Management and Budget, from Reps. Henry A. Waxman and John D. Dingell (Oct. 15, 2003). *See also Army Eyes Halliburton Import Role in Iraq*, Associated Press (Nov. 5, 2003) (quoting Jeffrey Jones, the former

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U.S. government auditors have also issued multiple reports finding excessive and unreasonable billing by Halliburton in Iraq. Among the auditors who have questioned Halliburton charges are the Defense Contract Audit Agency, the Special Inspector General for Iraq Reconstruction, and the Government Accountability Office. These audits have questioned the cost of fuel imports,¹⁴ lodging expenses,¹⁵ and the meals served troops,¹⁶ among other expenses.

Multiple criminal investigations of Halliburton's contracts are ongoing. On March 17, 2005, the Justice Department announced an indictment against a Halliburton official and subcontractor for "major fraud against the United States" under Halliburton's LOGCAP contract, alleging that a Halliburton manager billed more than \$5.5 million for work that should have cost only \$685,000.¹⁷ The Defense Criminal Investigative Service (DCIS), the State Department Inspector General, and the Justice Department are also investigating allegations of fraud and excessive charges for fuel imported under the RIO contract.¹⁸

Director of the Defense Energy Support Center within the Defense Department as stating: "I can't construct a price that high").

- ¹⁴ See, e.g., U.S. Department of Defense, Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5* (Audit Report No. 3311-2004K17900055) (Oct. 8, 2004).
- ¹⁵ Office of the Inspector General, Coalition Provisional Authority, *Federal Deployment Center: Forward Operations at the Kuwait Hilton* (Audit Report No. 04-003) (June 25, 2004).
- ¹⁶ U.S. General Accounting Office, *Military Operations: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight* (GAO-04-854) (July 2004).
- ¹⁷ U.S. Department of Justice, *Press Release: Former KBR Employee and Subcontractor Charged with \$3.5 Million Government Contract Fraud in Kuwait* (Mar. 17, 2005). See also *Ex-Halliburton Man Charged with Defrauding U.S. of \$3.5 Million*, New York Times (Mar. 18, 2005).
- ¹⁸ Letter from Joseph E. Schmitz, Defense Department Inspector General, to Rep. Henry A. Waxman (Feb. 20, 2004); Telephone conversation between Legislative Affairs Staff, State Department Inspector General's Office, and Minority Staff, House Government Reform Committee (Feb. 3, 2004) (reporting that DCIS requested the State Department IG to investigate actions by officials at the U.S. embassy in Kuwait). See also *Pentagon Opens Criminal Inquiry of Halliburton Pricing*, New York Times (Feb. 24, 2004); *Halliburton Faces Criminal Investigation: Pentagon Probing Alleged Overcharges for Iraq Fuel*, Houston Chronicle (Feb. 24, 2004).

II. PURPOSE AND METHODOLOGY

At the request of Rep. Henry A. Waxman and Senator Byron L. Dorgan, this report assesses the total amount of questioned and unsupported costs billed by Halliburton under its Iraq contracts. The report is based in significant part on new information from the Defense Contract Audit Agency and the Army Audit Agency.

A DCAA manual, the Contract Audit Manual, defines the terminology used by DCAA in its audits. The report uses this DCAA terminology in describing Halliburton's costs.

According to the DCAA Contract Audit Manual, "questioned costs" are costs "on which audit action has been completed" and "which are not considered acceptable."¹⁹ Questioned costs may be determined unacceptable for several reasons: they may be "unallowable" under the contract terms; they may not be "allocable" because they are not "incurred specifically for the contract;" or they may be "unreasonable in amount."²⁰ Costs are considered unreasonable in amount when they "exceed that which would be incurred by a prudent person in the conduct of a competitive business."²¹

DCAA classifies charges as "unsupported" when "the contractor does not furnish sufficient documentation to enable a definitive conclusion" about the acceptability of the charges.²²

In addition to assessing the amount and nature of Halliburton's questioned and unsupported costs, this report also examines whether Halliburton received special treatment from Defense Department officials in the award of its Iraq contracts, in how officials responded to audit findings, or in other ways.

III. FINDINGS

In addition to being the contractor with the largest contracts in Iraq, Halliburton is the contractor with the largest problems. According to new information from the Defense Contract Audit Agency, most DCAA audits of Iraq contracts have "found only minor cost exceptions or deficiencies in systems or processes," and "the

¹⁹ Defense Contract Audit Agency, Contract Audit Manual, § 10-304.8(b) (Jan. 2005).

²⁰ *Id.* See also *id.* at § 31.201-4(a).

²¹ *Id.* at § 31.201-3(a).

²² *Id.* at § 10-304.8(c).

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majority of these problems have been resolved by the contractors.”²³ This is not the case with Halliburton. According to DCAA, “major contract audit issues” are “limited to [the] largest Iraqi reconstruction contractor,” which is Halliburton.²⁴ In total, DCAA has found that Halliburton’s questioned and unsupported costs under the LOGCAP and RIO contracts exceed \$1.4 billion.

The actual amount of Halliburton’s questioned and unsupported costs may be significantly higher than \$1.4 billion. Major questions have been raised about Halliburton’s performance and charges under the RIO 2 contract. No questioned or unsupported costs from RIO 2 are included in the \$1.4 billion figure, however.

Defense Department officials have not taken effective action in their dealings with Halliburton to protect taxpayer interests. While Halliburton’s questioned and unsupported costs under the LOGCAP and RIO contracts were mounting, the company was simultaneously receiving favorable treatment from Defense Department officials, including preferential treatment in the award of contracts, the waiver of procurement regulations, and the relinquishing of disputed costs.

A. Halliburton’s Questioned and Unsupported Costs

New information from DCAA reveals that Halliburton’s questioned and unsupported costs under the LOGCAP and RIO contracts exceed \$1.4 billion. In total, the questioned costs exceed \$1.0 billion. Most of these questioned costs represent costs that the auditors considered “unreasonable in amount” after “audit action has been completed.”²⁵ DCAA reached this determination because the majority of the questioned costs “exceed that which would be incurred by a prudent person.”²⁶ The DCAA auditors also found \$442 million in Halliburton’s charges to be “unsupported.”

The magnitude of the costs that DCAA auditors have determined to be questioned more than doubles previously known amounts. Prior to this report, public information about Halliburton’s questioned costs totaled \$418 million, consisting of \$200 million in questioned costs for meal services under the LOGCAP contract and \$218 million in questioned costs for fuel importation and other services under the RIO contract.²⁷

²³ DCAA Briefing Slides, *supra* note 1.

²⁴ *Id.*

²⁵ Defense Contract Audit Agency, Contract Audit Manual, § 10-304.8(b) (Jan. 2005).

²⁶ *Id.* at § 31.201-3(a).

²⁷ See U.S. Army Field Support Command, *News Release: Army Field Support Command Agrees to Pay for Dining Facility Services* (Apr. 5, 2005) (noting that \$200 million in payments for Halliburton’s dining facility services “had been suspended”); Letter from

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An audit issued by DCAA on August 4, 2004, had raised concern with \$1.8 billion of Halliburton's charges under the LOGCAP contract.²⁸ At the time, however, DCAA considered all of those costs to be "unsupported," which meant that Halliburton had not yet supplied sufficient information to allow DCAA to make a definitive determination about their reasonableness.²⁹ The new information from DCAA reveals that DCAA has completed audits on most of these costs and has concluded that many of them are unreasonable and should be questioned.

1. The LOGCAP Contract

William Reed, the Director of the Defense Contract Audit Agency, provided a briefing to congressional staff on May 3, 2005. At that briefing, Mr. Reed disclosed that Halliburton's "questioned" costs under the LOGCAP contract have increased to more than \$813 million.³⁰ Most of these costs were questioned by the DCAA auditors because the completed audit action showed them to be unreasonable in amount.

The briefing from Mr. Reed disclosed that Halliburton's questioned costs under the LOGCAP contract have risen dramatically. The new figure of \$813 million in questioned costs is more than four times higher than the previously disclosed figure of \$200 million for billing meals that were never served to the troops.³¹

Mr. Reed also reported that DCAA identified an additional \$382 million in "unsupported" LOGCAP costs.³² These costs have not been adequately documented. When DCAA's audit is complete, some of these costs may become questioned costs; others may be found to be acceptable.

Rep. Henry A. Waxman to Rep. Christopher Shays (June 20, 2005) (noting that DCAA identified \$219 million in "questioned costs").

²⁸ Defense Contract Audit Agency, *Report on Audit of Estimating System* (Audit Report No. 3311-2004K24010001) (Aug. 4, 2004).

²⁹ *Id.* (noting that Halliburton's unsupported costs represented "over 42 percent of the total proposed value under the LOGCAP Task Orders").

³⁰ Briefing by William Reed, Director, Defense Contract Audit Agency, to Staff, Subcommittee on National Security, Emerging Threats and International Relations, House Government Reform Committee (May 3, 2005).

³¹ See U.S. Army Field Support Command, *News Release: Army Field Support Command Agrees to Pay for Dining Facility Services* (Apr. 5, 2005); DCAA Briefing Slides, *supra* note 1.

³² Briefing by William Reed, *supra* note 30.

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Mr. Reed did not provide a breakdown of either the \$813 million in questioned costs or the \$382 million in unsupported costs. However, a November 24, 2004, audit from the Army Audit Agency provides considerable detail about the nature of Halliburton's unreasonable costs.³³ This Army audit has not previously been disclosed.

The objectives of the Army audit report were to "evaluate the overall management of the LOGCAP contract" and "the procedures in place to control costs."³⁴ The report found that Halliburton "inflated" its estimates,³⁵ charged "excessive costs,"³⁶ billed for equipment that "wasn't necessary,"³⁷ and submitted millions of dollars in "duplicate costs."³⁸

The Army audit found that one of the most significant causes of Halliburton's excessive charges was deficient Defense Department oversight and an unquestioning reliance on Halliburton's assurances. When Halliburton submitted cost estimates that were exponentially higher than independent government cost estimates, Defense Department officials discarded the government estimates. As a result, the auditors concluded that Halliburton's inflated cost estimates became its "spending targets" rather than accurate reflections of required services.³⁹

The auditors examined cost estimates for LOGCAP Task Order 36, which was for operations and maintenance support at the Baghdad International Airport. They found that the government's estimate was \$1.9 million. In contrast, Halliburton's estimate for the same task order was \$12.8 million.⁴⁰ Similarly, under Task Order 27, which was for operations and maintenance support at Camp Arifjan in Kuwait, the government estimate was \$2.8 million, while Halliburton's estimate was \$10.8 million.⁴¹

Despite these vast differences, the auditors found "no indication that the program management or procuring contracting office reviewed the independent

³³ Army Audit Agency, *Logistics Civil Augmentation Program in Kuwait: U.S. Army Field Support Command* (Audit Report A-2005-0043-ALE) (Nov. 24, 2004).

³⁴ *Id.* at 5-6.

³⁵ *Id.* at 35.

³⁶ *Id.*

³⁷ *Id.* at 31.

³⁸ *Id.* at 34.

³⁹ *Id.* at 24.

⁴⁰ *Id.* at 28.

⁴¹ *Id.*

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government cost estimates.”⁴² Instead, the auditors found that military officials “were willing to rely on the contractor’s cost estimates with little or no question.”⁴³

When the Army auditors reviewed “rough orders of magnitude” and other Halliburton documents related to four LOGCAP task orders worth approximately \$464 million, they “identified more than \$40 million in proposed costs that exceeded requirements necessary for contractor performance.”⁴⁴ They provided the following examples:

- Overpriced and Double-Billed Soft Drinks. Halliburton costs of \$617,000 for soft drinks were “excessive” and “duplicated soft drinks included as part of food service costs.”⁴⁵
- Excessive Movie Rental Charges. Halliburton charged \$152,000 in “movie library costs,” an “excessive” cost for 2,500 personnel.⁴⁶
- Excessive Tailoring Service Charges. Halliburton proposed \$1.5 million for “tailoring, seamstress service and textile repair,” even though the company could have used a “more reasonable pricing method” under a preexisting subcontract that offered sewing services “in \$100 lots (on an as-needed basis).”⁴⁷
- Excessive Laundry Charges. Halliburton’s costs for laundry “increased by almost \$1 million” between task orders, an increase that was “excessive” because “the laundry requirements weren’t the subject of the change” and because “the government provided facilities, equipment and water.”⁴⁸
- Excessive Heavy Equipment Charges. Over \$560,000 worth of heavy mechanized equipment, including tractors and trailers, “wasn’t necessary”; in addition, the scope of work at various satellite sites “didn’t justify” the purchase of “five 25-ton rough terrain container handlers and five 20- to 50-ton cranes.”⁴⁹

⁴² *Id.* at 29.

⁴³ *Id.*

⁴⁴ *Id.* at 31.

⁴⁵ *Id.* at 32.

⁴⁶ *Id.*

⁴⁷ *Id.* at 33.

⁴⁸ *Id.* at 33-4.

⁴⁹ *Id.* at 31, 33.

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- Duplicate Charges. Halliburton's proposed costs of \$2.2 million for leased cargo aircraft and \$7.6 million for freight costs "appeared to be duplicate costs."⁵⁰

In some instances, the Army auditors reported that they "found more excessive contractor cost estimates when we compared costs in changes to task orders for the identical items on different task orders."⁵¹ For example, in one task order, Halliburton charged \$2.31 for towels and \$300 for video players. But in other task orders, Halliburton charged \$5 for towels and \$1,000 for video players.⁵²

On repeated occasions, Halliburton improperly raised its charges by hiring unnecessary employees. According to the audit, Halliburton's "labor estimates for expatriate personnel were inflated."⁵³ The auditors found that Halliburton "significantly overstated estimates of personnel requirements" and that the number of management and administration employees "exceeded needs."⁵⁴ For example, at one location, auditors "estimated that at least nine positions, with associated costs of about \$507,000, were redundant."⁵⁵ At another site, auditors found that Halliburton charged \$268,000 for 20 general laborers to clean two tents.⁵⁶

Halliburton also charged for employees that could not be located. For example, the auditors reported that Halliburton included \$1.4 million to pay 146 personnel to provide electrical, plumbing, and cleaning services at a facility, but "[t]he contractor had only 62 personnel onhand."⁵⁷

In addition to these excessive charges, the military did not have any standards for measuring Halliburton's performance once work was completed and charges were submitted. In particular, the Army failed to develop "performance assessment plans" required by the Federal Acquisition Regulation, the Guidebook for Performance-Based Service Acquisition, and the Army Materiel Command Contracting Guide.⁵⁸ These performance assessment plans are supposed to

⁵⁰ *Id.* at 34.

⁵¹ *Id.* at 33.

⁵² *Id.* at 34.

⁵³ *Id.* at 35.

⁵⁴ *Id.* at 34, 31.

⁵⁵ *Id.* at 31.

⁵⁶ *Id.* at 32.

⁵⁷ *Id.*

⁵⁸ *Id.* at 18.

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“describe how contractor performance will be measured.”⁵⁹ They are also supposed to “relate the assessments to the award factors” for determining Halliburton’s fee.⁶⁰

As the auditors concluded, “the government’s risk, which was already high for cost reimbursable contracts, was significantly increased because of limited visibility and control over contractor costs.”⁶¹

Finally, Army auditors also criticized the military for losing millions of dollars worth of equipment billed by Halliburton under the LOGCAP contract. In Afghanistan, for example, the Army “lost accountability over 12 Force Provider modules worth about \$75.6 million.” Force Provider modules are huge “tent cities that can each accommodate up to 550 soldiers.” The Army did not explain how it misplaced these large and expensive items, but it reported that military units subsequently arriving at the site “refused to inventory the property.”⁶²

2. The RIO Contract

DCAA has identified \$219 million in “questioned” costs under Halliburton’s Restore Iraqi Oil (RIO) contract. All of these questioned costs were determined by DCAA to be unreasonable in amount. DCAA has also identified \$60 million in “unsupported” charges under the RIO contract.

Information about Halliburton’s charges under the oil infrastructure contract has trickled out of the Defense Department over the course of more than two years. Members of Congress first began raising questions about the RIO contract in March 2003.⁶³ In more than a dozen letters between October 15, 2003, and February 17, 2005, Reps. Waxman and John D. Dingell presented evidence that Halliburton’s charges were too high, particularly for fuel imports from Kuwait and Turkey.⁶⁴

⁵⁹ *Id.* at 19.

⁶⁰ *Id.*

⁶¹ *Id.* at 36.

⁶² *Id.* at 44, 71.

⁶³ *See, e.g.*, Letter from Rep. Henry A. Waxman to Lt. Gen. Robert Flowers, U.S. Army Corps of Engineers (Mar. 26, 2003).

⁶⁴ Letter from Reps. Henry A. Waxman and John D. Dingell to OMB Director Joshua Bolten (Oct. 15, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Lt. Gen. Robert Flowers, U.S. Army Corps of Engineers (Oct. 21, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to National Security Advisor Condoleezza Rice (Oct. 29, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Lt. Gen. Robert Flowers, U.S. Army Corps of Engineers (Nov. 5, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell and Sen. Joseph Lieberman to Defense Department

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In December 2003, DCAA announced at a press conference that they had completed a draft audit finding that Halliburton billed for excessive charges of \$61 million for fuel imported from Kuwait into Iraq.⁶⁵ DCAA concluded that Halliburton “has not demonstrated ... that they did an adequate subcontract pricing evaluation.”⁶⁶ This audit was preliminary, however, and covered only the period until September 30, 2003.

In March 2004, Rep. Waxman obtained a completed DCAA audit of Task Order 5, one of ten task orders under the contract.⁶⁷ This audit identified questioned costs of \$108 million.⁶⁸ It criticized Halliburton's charges in nearly every area, including labor, material, subcontracts, overhead, and general and administrative expenses. The audit found that these inadequacies were “significant” and that Halliburton did not charge “a fair and reasonable price.”⁶⁹

After more than a dozen requests over a period of five months, audits for all ten task orders were finally submitted to Congress, providing the most comprehensive picture yet of Halliburton's excessive charges under this contract.⁷⁰ These audits

Inspector General Joseph E. Schmitz (Nov. 25, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to National Security Advisor Condoleezza Rice (Dec. 10, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Defense Secretary Donald H. Rumsfeld (Dec. 19, 2003); Letter from Reps. Henry A. Waxman and John D. Dingell to Lt. Gen. Robert Flowers, U.S. Army Corps of Engineers (Jan. 6, 2004); Letter from Rep. Henry A. Waxman to National Security Advisor Condoleezza Rice (Jan. 15, 2004); Letter from Reps. Henry A. Waxman and John D. Dingell and Sen. Joseph Lieberman to Defense Department Inspector General Joseph E. Schmitz (Jan. 16, 2004); Letter from Reps. Henry A. Waxman and John D. Dingell to Defense Department Inspector General Joseph E. Schmitz (Feb. 24, 2004); Letter from Rep. Henry A. Waxman to Rep. Tom Davis, Chairman, Government Reform Committee (Nov. 10, 2004); Letter from Rep. Henry A. Waxman to Secretary of State Condoleezza Rice (Feb. 17, 2005).

⁶⁵ U.S. Department of Defense, *News Briefing* (Dec. 11, 2003).

⁶⁶ *Id.*

⁶⁷ U.S. Department of Defense, Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5* (Audit Report No. 3311-2004K17900055) (Oct. 8, 2004).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil, Task Order No. 1* (Audit Report No. 3311-2004K17900011) (Mar. 19, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil, Task Order No. 2* (Audit Report No. 3311-2004K17900009) (Apr. 9, 2004); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil, Task Order No. 3* (Audit Report No. 3311-2004K17900056) (Oct. 2, 2004); Defense Contract Audit Agency, *Report on Audit of the Additional Funding Proposal for RIO I Task Order No. 04* (Audit

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identified \$219 million in “questioned” costs. In one case, the questioned costs exceeded 47% of the total value of the task order.⁷¹ These costs were challenged by the DCAA auditors because the completed audits showed them to be unreasonable in amount.

The DCAA auditors also identified \$60 million in “unsupported” charges. Table B sets forth these questioned and unsupported costs for all ten task orders reviewed by DCAA.

TABLE B: QUESTIONED AND UNSUPPORTED COSTS UNDER HALLIBURTON'S RESTORE IRAQI OIL (RIO) CONTRACT			
TASK ORDER	“QUESTIONED” COSTS	“UNSUPPORTED” COSTS	COMBINED
1	904,146	0	904,146
2	199,804	0	199,804
3	12,239,343	41,456,016	53,695,359
4	12,483,195	1,216,216	13,699,411
5	84,446,016	0	84,446,016
6	16,552,846	17,661,533	34,214,379
7	35,681,321	0	35,681,321
8	22,780,683	0	22,780,683
9	19,902,697	0	19,902,697
10	13,603,145	0	13,603,145
TOTALS	\$218,793,196	\$60,333,765	\$279,126,961

Report No. 3311-2004K17900086) (Sept. 3, 2004); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 5* (Audit Report No. 3311-2005K21000024) (Feb. 25, 2005); Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 6* (Audit Report No. 3311-2004K21000028) (Sept. 16, 2004); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 7* (Audit Report No. 3311-2005K21000025) (Feb. 25, 2005); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 8* (Audit Report No. 3311-2005K21000026) (Feb. 25, 2005); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 9* (Audit Report No. 3311-2005K21000019) (Feb. 3, 2005); Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 10* (Audit Report No. 3311-2005K21000020) (Feb. 3, 2005). In addition, DCAA reports that they completed an updated audit of Task Order 5 on April 16, 2005, identifying \$84,446,016 in questioned costs.

⁷¹ Defense Contract Audit Agency, *Report on Audit of Revised Proposal for Restore Iraqi Oil Delivery Order No. 10* (Audit Report No. 3311-2005K21000020) (Feb. 3, 2005).

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Of the \$219 million in questioned costs, DCAA reported that \$171 million relate to fuel imports from Kuwait and Turkey into Iraq. According to DCAA, Halliburton “failed to support reasonableness of prices paid for fuel purchased from a Kuwaiti supplier (\$139 million)” and “inappropriately adjusted fixed prices for fuel purchased from a Turkish supplier (\$32 million).”⁷²

DCAA concluded that Halliburton failed to take advantage of multiple opportunities to negotiate a better deal with its subcontractor, an obscure Kuwaiti subcontractor named Altanmia Commercial Marketing Company. Although the auditors “recogniz[ed] the challenges faced by KBR during the early stages of the war,” they found that these circumstances should not have prevented action for months:

It is not reasonable to use prices negotiated in only a few days, under extremely difficult circumstances, for the entire period of performance which extends for almost a year (229 days). Effective subcontract administration ... requires ongoing (e.g., monthly) documented reviews of the continued reasonableness of the Kuwait fuel prices and efforts to renegotiate these prices if such reviews indicated unreasonable prices.⁷³

Taking into account early obstacles, the auditors concluded that Halliburton “should have pursued negotiating lower prices after the ‘urgent and compelling’ circumstances subsided, 30–90 days after the start of the contract.”⁷⁴

Halliburton officials have described their subcontractor selection process as “open and competitive.”⁷⁵ Defense Department officials have also stated that Halliburton “obtained adequate price competition for the delivery of gasoline to Iraq.”⁷⁶ But DCAA’s audits refute these assertions. DCAA concluded that Halliburton “failed to demonstrate adequate competition in its procurement

⁷² DCAA Briefing Slides, *supra* note 1.

⁷³ U.S. Department of Defense, Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5* (Audit Report No. 3311-2004K17900055) (Oct. 8, 2004), at 2.

⁷⁴ *Id.* at 13.

⁷⁵ *Halliburton Defends Price of Iraqi Fuel*, Platts Oilgram News (Oct. 20, 2003); *see also* Halliburton, *Press Release: Halliburton Provides Update on Fuel Delivery Mission in Iraq* (Oct. 21, 2003) (stating that “[t]hrough an open and competitive process, KBR awarded the fuel acquisition contracts”).

⁷⁶ U.S. Army Corps of Engineers, *Waiver of Submission of Cost and Pricing Data* (Dec. 19, 2003).

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decision.”⁷⁷ According to DCAA, the subcontract awarded to Altanmia was not “a competitive award,” but instead “must be considered a sole source procurement.”⁷⁸

The auditors also criticized Halliburton for making unnecessary retroactive payments to its Turkish fuel subcontractors. They noted that Halliburton had negotiated “fixed-unit-rate” and “firm-fixed-price” subcontracts with various Turkish subcontractors to import fuel into Iraq. During the term of these subcontracts, the market price of the fuel increased. When the Turkish companies asked Halliburton “to increase the unit price of the fuel to compensate for losses due to market increases,” Halliburton “agreed to pay the higher prices retroactively.”⁷⁹ The auditors concluded: “We do not believe it was appropriate to retroactively adjust the fuel unit prices of KBR’s fixed-unit-rate and firm-fixed-price subcontracts when there are no provisions in the subcontracts to do so.”⁸⁰

3. The RIO 2 Contract

The finding by Defense Department auditors that Halliburton’s questioned and unsupported costs have risen to more than \$1.4 billion may not include all of the company’s questionable charges in Iraq. In addition to the LOGCAP contract and the first RIO contract, Halliburton also has another \$1.2 billion contract to repair oil infrastructure in southern Iraq, known as the Restore Iraqi Oil 2 (RIO 2) contract. This contract was awarded in January 2004.⁸¹

Significant questions surround Halliburton’s performance and charges under RIO 2. The contracting officer in charge of the contract, U.S. Air Force Maj. Mike Waggle, has stated that “the company showed \$436 million in cost overruns.”⁸² He also complained that Halliburton has “repeatedly failed to control costs” under this contract.⁸³ In an April 2005 quarterly report, the State Department warned that Halliburton has failed “to adequately control and report costs” under RIO 2.⁸⁴ The State Department also reported that Halliburton was issued a “Cure Notice”

⁷⁷ U.S. Department of Defense, Defense Contract Audit Agency, *Report on Audit of Proposal for Restore Iraqi Oil Task Order No. 5* (Audit Report No. 3311-2004K17900055) (Oct. 8, 2004), at 16.

⁷⁸ *Id.*

⁷⁹ *Id.* at 2-3.

⁸⁰ *Id.*

⁸¹ U.S. Army Corps of Engineers, *Press Release: U.S. Army Corps of Engineers Awards Contracts for Repair of Iraq’s Oil Infrastructure* (Jan. 16, 2004).

⁸² *Projects in Iraq to Be Reevaluated*, Los Angeles Times (Apr. 9, 2005).

⁸³ *Id.*

⁸⁴ U.S. Department of State, *Quarterly Update to Congress: 2207 Report* (Apr. 2005).

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on January 29, 2005, but that Halliburton's remedial actions in response to the cure notice were "considered insufficient."⁸⁵

Because completed audit reports are not available for the RIO 2 contract, this report does not include any unreasonable charges from the RIO 2 contract in the estimate of Halliburton's total questioned and unsupported costs. Inclusion of these costs would likely significantly elevate this total.

B. Examples of Preferential Treatment for Halliburton

Despite the magnitude of Halliburton's questioned and unsupported costs, the company has repeatedly received special treatment from Defense Department officials. As the eight examples below illustrate, the objections of career officials have been overruled, the requirements of federal procurement regulations have been waived, and Halliburton has been awarded millions of dollars in unjustified fees.

1. Award of the Iraq Oil Contingency Planning Contract

In the fall of 2002, Michael Mobbs, a political appointee in the office of Douglas Feith, Under Secretary for Policy at the Defense Department, made the decision to award the oil infrastructure work in Iraq to Halliburton. This decision was made in secret without competition from any other companies. White House officials, including the Vice President's chief of staff, were briefed on this decision.⁸⁶

The first sole-source contract that Halliburton received relating to reconstruction in Iraq was a \$1.9 million task order under the LOGCAP contract to draw up contingency plans for U.S. occupation of the Iraqi oil fields. This contract was awarded in November 2002. At the time this no-bid contract was awarded, Mr. Mobbs knew that the company that received the contingency contract would also be awarded the much larger RIO contract.⁸⁷

⁸⁵ *Id.*

⁸⁶ Briefing by Michael Mobbs, Special Assistant to the Under Secretary of Defense for Policy Douglas Feith, for Staff, House Government Reform Committee (June 8, 2003). *See also* Letter from Rep. Henry A. Waxman to Vice President Richard B. Cheney (June 13, 2004) (online at www.democrats.reform.house.gov/Documents/20040623114026-70050.pdf) (describing June 8, 2004, briefing).

⁸⁷ U.S. General Accounting Office, *Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges* (GAO-04-605) (June 2004) (concluding that "DOD recognized as early as November 2002 that the contractor, given its role in preparing a contingency support plan, would be in the best position to execute the plan").

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A career attorney with the Army Materiel Command objected to this plan on the grounds that it would violate federal procurement law. The attorney observed that the oil planning work had nothing to do with providing meals, laundry, and other logistical support under the LOGCAP contract, and therefore it should be awarded out under a separate contract. These objections were overruled, however, after the intervention of a senior Defense Department lawyer who worked with Mr. Mobbs.⁸⁸

The Government Accountability Office later analyzed the transaction and concluded that it was not “in accordance with legal requirements” because “preparation of the contingency support plan for this mission was beyond the scope of the contract.”⁸⁹ GAO added that the work “should have been awarded using competitive procedures.”⁹⁰

2. Award of the RIO Contract

Despite strenuous objections from the chief contracting official at the Army Corps of Engineers, the Defense Department secretly awarded Halliburton a five-year, no-bid contract to repair Iraq’s oil infrastructure in March 2003.

Bunnatine H. Greenhouse served as the Principal Assistant Responsible for Contracting (PARC) with the Army Corps of Engineers. Ms. Greenhouse objected for several reasons to the award to Halliburton of the RIO contract, which was worth up to \$7 billion.

First, Ms. Greenhouse objected to awarding Halliburton a contract for which it developed the specifications. In particular, she was “concerned that the award to KBR conflicted with the usual practice of excluding contractors who prepare cost estimates and courses of action, such as KBR did in its contingency plan, from bidding on the follow-on implementation contract due to the potential for conflicts of interest and overreaching by the contractor.”⁹¹

Second, Ms. Greenhouse objected to awarding Halliburton a so-called “emergency” contract lasting up to five years. Although she agreed that a “compelling emergency” might justify a one-year award, she “could not

⁸⁸ Briefing by Michael Mobbs, Special Assistant to the Under Secretary of Defense for Policy Douglas Feith, for Staff, House Government Reform Committee (June 8, 2003).

⁸⁹ U.S. General Accounting Office, *Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges* (GAO-04-605) (June 2004).

⁹⁰ *Id.*

⁹¹ Letter from Michael D. Kohn, Stephen M. Kohn, and David K. Colapinto, Counsel to Bunnatine H. Greenhouse, to the Honorable Les Brownlee, Acting Secretary of the Army (Oct. 21, 2004).

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understand why the emergency conditions would prohibit [the government] from extending the contract the following year or any subsequent years if the prosecution of the war made that necessary.”⁹²

Ms. Greenhouse also objected to Halliburton's proposed costs, arguing that Halliburton's charges for initial deployment “should be lower” since Halliburton was already deployed, and that the government should not pay for indemnification liability coverage already covered under other contracts.⁹³

Finally, Ms. Greenhouse objected to allowing Halliburton access to internal government meetings and information. For example, she attended a meeting at the Pentagon on February 26, 2003, to discuss cost issues before the oil infrastructure contract had been awarded. When Halliburton officials arrived and began participating in the meeting, “she was so disturbed” that she requested that they be told to leave. By that time, she had concluded that the line between Halliburton and government officials “had become so blurred that a perception of a conflict of interest existed.”⁹⁴

Despite all of these objections, the Army Corps of Engineers ultimately chose to award the contract to Halliburton in secret after excluding all other potential contractors. The Corps rejected Ms. Greenhouse's specific recommendation for a limited duration arrangement and awarded the contract for a five-year term.

3. Waiver of the Requirement to Provide Cost and Pricing Data

In December 2003, days after Defense Department auditors preliminarily concluded that Halliburton was charging excessive amounts for fuel imports from Kuwait into Iraq, the Department granted Halliburton a special waiver releasing the company from providing certified cost and pricing data from its Kuwaiti fuel subcontractor.

On December 11, 2003, auditors from the Defense Contract Audit Agency held a press conference announcing that their draft audit had found that Halliburton billed for as much as \$61 million in excessive costs to import gasoline from Kuwait into Iraq. The auditors indicated that Halliburton “has not demonstrated ... that they did an adequate subcontract pricing evaluation prior to award” of the subcontract to Altanmia.⁹⁵

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *DOD News Briefing*, Defense Contract Audit Agency (Dec. 11, 2003).

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Rather than cooperate with this audit, however, Department officials took the opposite action. They granted Halliburton a waiver that eliminated Halliburton's responsibility to provide "any cost and pricing data" from its Kuwaiti subcontractor, Altanmia.⁹⁶ In the same waiver, the Department unilaterally declared that the company's gasoline prices were "fair and reasonable."⁹⁷

The purported rationale for granting the waiver was that Kuwaiti law prohibited the Kuwaiti subcontractor from submitting the information. As the waiver document stated, "it is a violation of Kuwaiti law for contractors to submit cost and pricing data for fuel products."⁹⁸ This premise turned out to be false, as several independent sources confirmed that no Kuwaiti law prohibits the submission of certified cost and pricing data for fuel products.⁹⁹

4. Award of the RIO 2 Contract

In January 2004, Defense Department officials awarded Halliburton a \$1.2 billion follow-on oil infrastructure contract despite receiving a warning from Pentagon auditors not to enter future negotiations with the company without consulting with the auditors.

On December 31, 2003, the Defense Contract Audit Agency issued a "Flash Report," alerting various Defense Department agencies about "significant deficiencies" in Halliburton's cost estimating system.¹⁰⁰ According to the auditors, these deficiencies "could adversely affect the organization's ability to propose subcontract costs in a manner consistent with applicable government contract laws and regulations."¹⁰¹

⁹⁶ U.S. Army Corps of Engineers, *Waiver for Submission of Cost and Pricing Data* (Dec. 19, 2003).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See, e.g., Library of Congress, *Kuwaiti Fuel Laws* (Jan. 15, 2004) (concluding that "initial research did not reveal the existence of any law prohibiting companies from releasing cost and pricing data for fuel products in Kuwait"); see also Telephone conversation between Samad Al-Blouki and Minority Staff, Committee on Government Reform (Jan. 20, 2004) and Telephone conversation between Samad Al-Blouki and Minority Staff, Committee on Government Reform (Jan. 14, 2004) (former managing director of Kuwait Petroleum Corporation in Europe confirmed that there is no Kuwaiti law prohibiting the submission of certified cost and pricing data for fuel products).

¹⁰⁰ Defense Contract Audit Agency, *Flash Report on Estimating System Deficiency Found in the Proposal for Contract No. DAAA09-02-D-0007, Task Order No. 59* (Audit Report No. 3311-2004K24020001) (Dec. 31, 2003).

¹⁰¹ *Id.*

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Based on that Flash Report, the auditors then sent a second memo on January 13, 2004, warning that Halliburton could not adequately estimate its costs for work in Iraq.¹⁰² The memo emphasized that Halliburton's systemic deficiencies "bring into question [Halliburton's] ability to consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices."¹⁰³ It also stated:

We recommend that you contact us to ascertain the status of [Halliburton's] estimating system prior to entering into future negotiations.¹⁰⁴

On January 16, 2004, just three days after this memo was sent, the Army Corps of Engineers awarded Halliburton a new \$1.2 billion contract to restore and operate the oil infrastructure in the southern half of Iraq.¹⁰⁵ In response to questions about why the Corps disregarded the auditor warnings, an Army spokesman stated: "We have our own internal audit process [and we] haven't turned up any serious wrongdoing or major problems."¹⁰⁶

5. Waiver of the Requirement to Withhold Partial Payments

Beginning in March 2004, the Defense Department granted Halliburton a series of waivers from a federal procurement rule requiring the Defense Department to withhold 15% of payments to Halliburton until the company submitted adequate cost estimates for its work in Iraq.

On August 16, 2004, the Defense Contract Audit Agency issued a memo to the Army Field Support Command, which administers Halliburton's LOGCAP troop support contract. In the memo, the auditor agency "strongly encourages" the Army to withhold 15% of Halliburton's payments because of "significant unsupported costs" and "numerous, systemic issues" with Halliburton's cost

¹⁰² Defense Contract Audit Agency, *Status of Brown & Root Services (BRS) Estimating System Internal Controls* (Jan. 13, 2004).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ U. S. Army Corps of Engineers, *News Release: U. S. Army Corps of Engineers Awards Contracts for Repair of Iraq's Oil Infrastructure* (Jan. 16, 2004) (including, but not limited to, "extinguishing oil well fires; environmental assessments and cleanup at oil sites; oil infrastructure condition assessments; engineering design and construction necessary to restore the infrastructure to a safe operating condition; oilfield, pipeline and refinery maintenance; procurement and importation of fuel products; distribution of fuel products within Iraq; technical assistance in marketing and sale/export; and technical assistance and consulting services to the Iraqi oil companies").

¹⁰⁶ *Halliburton Contract Questions Dog White House*, Chicago Tribune (Feb. 1, 2004).

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proposals.¹⁰⁷ Under these circumstances, the Federal Acquisition Regulation requires the Defense Department to protect the interests of the taxpayer by withholding 15% of reimbursements until disagreements are resolved.¹⁰⁸

In the memo, the DCAA auditors reported that “[t]o date, KBR has not provided ... basic supporting data for the significant task order proposals.”¹⁰⁹ The auditors wrote, “We do not believe the quality of KBR’s proposals has improved. ... [E]ach successive update continues to be significantly deficient.”¹¹⁰ They also stated:

It is clear to us KBR will not provide an adequate proposal until there is a consequence. Therefore, we strongly encourage you not to extend the implementation of this clause any further and only allow payment of the 85 percent as specified in the clause.¹¹¹

Other government auditors, including the Special Inspector General for Iraq Reconstruction, agreed with this recommendation.¹¹²

Despite these multiple auditor entreaties, the Defense Department approved a final waiver of the 15% withholding provision on February 2, 2005. According to the Defense Department, the decision was made because “the additional financial strain” on Halliburton “could severely impact the level and responsiveness of the services provided to our forces.”¹¹³

6. Redaction of Audit Findings

At Halliburton’s request, and despite the urging of Army officials for a “sanity check,” the Defense Department concealed the magnitude of Halliburton’s questioned and unsupported costs in audit reports submitted in October 2004 to U.N. officials charged with overseeing the expenditure of Iraqi funds.

¹⁰⁷ Memorandum from Defense Contract Audit Agency to U.S. Army Field Support Command (Aug. 16, 2004).

¹⁰⁸ Federal Acquisition Regulation, 48 C.F.R. § 52.216-26.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Special Inspector General for Iraq Reconstruction, *Task Order 0044 of the Logistics Civilian Augmentation Program III Contract* (Report No. 05-003) (Nov. 23, 2004).

¹¹³ Letter from Benjamin S. Griffin, Commanding General, U.S. Army Materiel Command, to Rep. Henry A. Waxman (Mar. 6, 2005).

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Under the RIO contract, the Defense Department paid Halliburton with a mix of U.S. and Iraqi funds. Of the \$2.5 billion Halliburton was ultimately paid, \$1.6 billion came from Iraqi oil proceeds held in the U.S.-controlled Development Fund for Iraq, the successor to the Oil for Food program run by the United Nations.¹¹⁴ The U.N. Security Council transferred control of these Iraqi funds to the United States through Resolution 1483, which directed the United States to use Iraqi funds “in a transparent manner” for the benefit of the Iraqi people.¹¹⁵ This resolution also created the International Advisory and Monitoring Board (IAMB) to monitor U.S. compliance with the resolution.¹¹⁶

When the IAMB requested copies of DCAA’s audits of Halliburton’s RIO contract, the Defense Department redacted every mention of every questioned and unsupported charge from every audit turned over to the international auditors. In total, references to excessive charges were blacked out over 460 times.¹¹⁷ After examining the redacted audits, the chair of the IAMB reported that “it was impossible to determine the extent of alleged overcharges because the figures had been redacted.”¹¹⁸

These extensive redactions were proposed by Halliburton and accepted by the Defense Department without modification. According to a letter Halliburton sent to the Army Corps of Engineers, Halliburton officials proposed redacting not just proprietary business information, but all portions of the audits they “believe are factually incorrect or misleading.”¹¹⁹

When career officials at the Army recommended that the Department conduct a “sanity check” of Halliburton’s redactions, this advice was rejected.¹²⁰ Instead, the Defense Department General Counsel’s office warned that any Defense Department official who disclosed any part of the audits without the express

¹¹⁴ U.S. Army Corps of Engineers, *Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom* (Oct. 7, 2004) (online at www.hq.usace.army.mil/CEPA/Iraq/March03-table.htm).

¹¹⁵ U.N. Security Council Resolution 1483 (May 22, 2003).

¹¹⁶ *Id.*

¹¹⁷ See Letter from Rep. Henry A. Waxman to Rep. Christopher Shays (June 20, 2005) (online at www.democrats.reform.house.gov/Documents/20050620110738-07899.pdf) (describing redactions process).

¹¹⁸ *U.N. Board Cites U.S. Contractor in Iraq*, Washington Post (Dec. 15, 2004).

¹¹⁹ Letter from Michael K. Morrow, Contracts Manager, KBR, to Gordon A. Sumner, Contracting Officer, U.S. Army Corps of Engineers (Sept. 28, 2004).

¹²⁰ Meeting between Colonel Emmett DuBose, U.S. Army Corps of Engineers, and J. Joseph Tyler, Chief of the Program Management Division of the U.S. Army Corps of Engineers, and Majority and Minority Staff, Subcommittee on National Security, Emerging Threats and International Relations (June 15, 2005).

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permission of Halliburton would face criminal penalties under the Trade Secrets Act.¹²¹ The ostensible rationale for these legal conclusions was that Defense Department officials were incapable of “second-guessing” Halliburton’s assertion of what information in the audits was a trade secret.¹²²

7. Award of Fees for Questioned Meal Charges

In April 2005, Defense Department officials dismissed auditor findings that Halliburton had submitted \$200 million in questioned charges for dining facility services, deciding instead to retroactively change the formula for Halliburton’s billing and increase the company’s profit margin.

On April 5, 2005, the U.S. Army Field Support Command announced that Halliburton would receive \$145 million out of \$200 million (72.5%) of the costs DCAA questioned for meal services in Iraq.¹²³ In making this determination, the Defense Department “sustained” only 27.5% of DCAA’s recommendations. The historical level is between 60% and 70%.

Nothing in the Army’s press release found any fault with the auditors’ conclusions that Halliburton had billed for meals it never served. Instead, the officials developed a new formula for calculating the number of meals for which Halliburton could charge. Rather than paying for one meal each time a person ate, the Department agreed to pay for 1.3 meals.¹²⁴

At the same time, the Department increased the company’s fee for the food services work. Although not mentioned anywhere in the Army’s press release, Department officials agreed to increase the company’s fee from 1% to 3%, generating an extra \$26 million for Halliburton.¹²⁵

8. Award of New Contracts

The favoritism shown Halliburton appears to be continuing. Despite the auditor findings of over \$1.4 billion in questioned and unsupported costs in Iraq, Halliburton has recently received two new contract awards.

¹²¹ *Id.*

¹²² *Id.*

¹²³ U.S. Army Field Support Command, *News Release: Army Field Support Command Agrees to Pay for Dining Facility Services* (Apr. 5, 2005).

¹²⁴ *Army, Halliburton Settle Bill Dispute*, Wall Street Journal (Apr. 6, 2005).

¹²⁵ *Id.*

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The first new contract is a contract with the Defense Department to build additional prison facilities for detainees at Guantanamo Bay, Cuba. According to the Defense Department, this contract, which was announced on June 18, 2005, is worth up to \$500 million.¹²⁶

Three days later, on June 21, 2005, the Department announced that Halliburton had also been awarded a new contract to provide a "logistics services" similar to LOGCAP to support U.S. forces deployed to Europe. According to the announcement by the Army Corps of Engineers, this contract is worth up to \$1.25 billion.¹²⁷

IV. CONCLUSION

The findings in this report raise serious concerns about the magnitude of Halliburton's questioned and unsupported charges and the failure of Administration officials to take effective action to protect the taxpayers' interests. New information from the Defense Contract Audit Agency reveals that Halliburton's questioned and unsupported costs now exceed \$1.4 billion. Yet despite this record, Defense Department officials have repeatedly shown Halliburton special treatment by overruling the objections of career officials, waiving the requirements of the federal procurement regulations, and awarding Halliburton millions in lucrative fees.

¹²⁶ *Halliburton Is Given New Prison Contract*, Associated Press (June 19, 2005).

¹²⁷ U.S. Army Corps of Engineers, *Press Release: U.S. Army Corps of Engineers Awards Logistics Support Contract to Provide Services in U.S. Army Europe's Area of Operations* (June 21, 2005).